

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Martha S. and Miguel G. Campos

San Jose, California

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File Number EB-07-SF-051

NAL/Acct. No. 200832980001

FRN: 0017083221

FORFEITURE ORDER

Adopted: May 19, 2008

Released: May 21, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of eight hundred dollars (\$800) to Martha S. and Miguel G. Campos, owners and operators of a Citizens Band (“CB”) radio station in San Jose, California, for willful violation of Section 301 of the Communications Act of 1934, as amended, (“Act”).¹ On October 31, 2007, the Enforcement Bureau’s San Francisco Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$10,000 to the Campos for operating a modified CB radio station on a frequency not authorized for CB use. In this *Order*, we consider the Campos’ arguments that they were not aware of the severity of their violations, and that they do not have the ability to pay the forfeiture.

II. BACKGROUND

2. On April 7, 2006, the Enforcement Bureau’s San Francisco Office received a complaint alleging intentional interference to CB radio communications on 27.055 MHz. The complaints alleged that the source of the interference was located at the residence of CB radio operators, Martha and Miguel Campos, in San Jose, California.

3. On August 24, 2006, after subsequent complaints, the San Francisco Field Office issued a Warning Letter to Miguel G. Campos (“August Warning Letter”). The Warning Letter informed Mr. Campos that, pursuant to Section 95.407 of the Commission’s Rules (“Rules”) (CB Rule 7),² he must operate his CB station only on the 40 channels allocated to the CB service and he must not modify his CB radio to operate on any other frequency other than allocated to the service. The August Warning Letter also warned Mr. Campos that pursuant to Section 95.409 of the Rules (CB Rule 9),³ he must not make, or

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 95.407.

³ 47 C.F.R. § 95.409.

have made, any internal modification to a FCC certificated CB transmitter. Further, Mr. Campos was warned that if the transmissions continue, he would be investigated during ongoing FCC enforcement efforts and if such an investigation indicates that he had violated the Communications Act or any FCC Rules, he could be subject to severe penalties, including, but not limited to, substantial monetary forfeitures.

4. On August 31, 2006, Mr. Campos replied to the letter acknowledging that he was a CB operator and detailing the CB equipment that he used.

5. On September 29, 2006, in response to continued complaints, the San Francisco Office issued a Warning Letter to Martha S. Campos ("September Warning Letter"). The September Warning Letter informed Mrs. Campos that, pursuant to Section 95.407 of the Rules (CB Rule 7),⁴ she must operate her CB station only on the 40 channels allocated to the CB service and she must not modify her CB radio to operate on any other frequency other than allocated to the service. The September Warning Letter also warned Ms. Campos that pursuant to Section 95.409 of the Rules (CB Rule 9),⁵ she must not make, or have made, any internal modification to a FCC certificated CB transmitter. Further, Ms. Campos was warned that if the transmissions continue, she would be investigated during ongoing FCC enforcement efforts and if such an investigation indicates that he had violated the Communications Act or any FCC Rules, she could be subject to severe penalties, including, but not limited to, substantial monetary forfeitures.

6. On October 27, 2006, Martha and Miguel Campos came to the San Francisco Office to discuss the warning letters they had received. A San Francisco agent clarified some of the CB Rules to them and again warned them about the consequences of not following the CB Rules.

7. During the period of November 2, 2006, to February 2, 2007, the San Francisco Office continued to receive complaints alleging interference by the Campos.

8. On March 16, 2007, San Francisco agents, using mobile direction finding techniques, located the source of the alleged interfering signal on 27.675 MHz to the Campos' residence in San Jose, California. The San Francisco agents monitored the transmission of one-way communications on 27.675 MHz. The agents also conducted an inspection of the Campos' CB station and found two CB transmitters that were set up and connected to outdoor antennas at Campos's residence. By conducting on/off tests, the agents confirmed that one of the transmitters had been modified to operate on frequency 27.675 MHz, a frequency that is not authorized for use by CB stations. The agents further determined that the transmitter set up in the Campos' residence was capable of operating in excess of the four-watt power limitations.

9. From April 10, 2007, to September 10, 2007, the San Francisco Office continued to receive complaints alleging interference by the Campos.

10. On October 31, 2007, the San Francisco Office issued a *NAL* in the amount of \$10,000 to the Campos.⁶ In the *NAL*, the San Francisco Office found that the Campos apparently willfully violated Section 301 of the Act,⁷ by operating a modified CB radio station on a frequency not authorized for CB use.

⁴ 47 C.F.R. § 95.407.

⁵ 47 C.F.R. § 95.409.

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832980001 (Enf. Bur., Western Region, San Francisco Office, released October 31, 2007).

⁷ 47 U.S.C. § 301.

Campos filed a response (“*Response*”) to the *NAL* on January 16, 2008. In their *Response*, the Campos argue that they were not aware of the severity of the violations, and that they do not have the ability to pay the forfeiture.

III. DISCUSSION

11. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹⁰ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹

12. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.¹² Individual licenses are not required to operate CB radio stations. Section 95.404 of the Rules provides a blanket authorization to all CB users, provided that their stations are operated in accordance with the Rules.¹³ Section 95.425(c) of the Rules states that “you must not operate a CB transmitter which has been modified by anyone in any way, including modification to operate on unauthorized frequencies”¹⁴ Section 95.409(b) of the Rules states that “[y]ou must not make, or have made, any internal modification to a certificated CB transmitter. . . . Any internal modification to a certificated CB transmitter cancels the certification, and use of such a transmitter voids your authority to operate the station.”¹⁵ Section 95.407(a) of the Rules limits CB operators to operation on 40 specific channels.¹⁶ Frequency 27.675 MHz is not listed among those channels.

13. On August 24, 2006, September 29, 2006, and October 10, 2006, the Campos’ were warned by the San Francisco Office that subsequent violation of the Commission’s Rules could result in monetary forfeitures. On March 16, 2007, an investigation by San Francisco agents revealed that the Campos had modified their CB transmitter to operate on 27.675 MHz, a frequency not authorized for CB use, and observed the Campos operating on 27.675 MHz.

14. In their *Response*, the Campos do not deny the use of the CB transmitter as detailed in the *NAL*. Instead, they argue that did not comprehend the severity of the situation, because they were not

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 U.S.C. § 301.

¹³ 47 C.F.R. § 95.404.

¹⁴ 47 C.F.R. § 95.425(c).

¹⁵ 47 C.F.R. § 95.409(b).

¹⁶ 47 C.F.R. § 95.407(a). The authorized frequencies for CB operation range from 26.965 MHz (CB Channel 1) to 27.405 MHz (CB Channel 40).

able to read English, however, Miguel Campos was able to “understand English in spoken form.” We are not persuaded by this argument. After the Campos received two warning letters from the San Francisco Office concerning their violations, they came to the San Francisco Office on October 27, 2006, for an interview, during which a San Francisco agent went through the violations in spoken English with the Campos.¹⁷ The San Francisco agent also answered questions from Miguel Campos during that interview. It was only after that interview, when the Campos continued to operate their CB transmitter in violation of the Rules, that the San Francisco Office issued the *NAL* against the Campos.

15. The Campos also argue that they do not have the ability to pay the proposed forfeiture amount. To support this claim, the Campos supplied tax returns for the three years prior to the *NAL*. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.¹⁸ We have reviewed the data supplied by the Campos and we conclude that reduction of the forfeiture from \$10,000 to \$800 is warranted.¹⁹

16. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that the Campos willfully violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$800 is warranted. In light of the repeated complaints received by the San Francisco Office prior to the *NAL*, and the substantial reduction of the proposed forfeiture based on a demonstrated inability to pay, we caution the Campos that any new violations would mitigate against forfeiture reduction in the future.

IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Martha S. and Miguel G. Campos, **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of \$800 for willfully violating Section 301 of the Act.²⁰

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank

¹⁷ San Francisco Office records show that the Campos’ son spoke with San Francisco agents on August 31, 2006, and September 8, 2006, so that he could translate the violations contained in the August Warning Letter to Mr. Campos.

¹⁸ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

¹⁹ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues).

²⁰ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).

TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Martha S. and Miguel G. Campos, at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau